No. 256/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 477 OF 2012

IN THE MATTER OF THE ESTATE OF GRACE MARY MUSYOKI (DECEASED)

DAVID MULUNGYE MUSYOKI .....PETITIONER/RESPONDENT

VERSUS

JOSEPH TOM KITHUNGA……..……..…1ST OBJECTOR

SIMON MUTETI KITHUNGA……..……. 2ND OBJECTOR

RULING

1. A petition of Letters of Administration Intestate was made herein by **David Mulungye Musyoka.** He made the application in his capacity as the son of **Grace Mary Musyoki** (deceased). In the affidavit in support of the petition he indicated names of persons who survived the deceased as **Daniel Munyalo Musyoki** (deceased) Jones **Kithunga Musyoki** (Deceased), **Susan Muthikwa** Wambua (deceased) **David Mulungye Musyoki.** Assets were indicated as: -

i. Parcel of land No. Muputi/Kimutwa/146
ii. Parcel No. of Land No. Muputi/Kimutwa/206.

2. A notice of application for the grant was published. Objections thereto were invited. Prior to the temporary Grant of Letters of Administration Intestate being issued, there was an objection raised to issuance of the grant by **Joseph Tom Kithunga** and **Simon Muteti Kithunga** who described themselves as sons of **Jones Kithunga Musyoki** (deceased). Listed parcels of land that had been registered in the name of the deceased that form her estate as follows:-

a. Muputi/Kimutwa/318
b. Muputi/Kimutwa/109
c. Muputi/Kimutwa/141
d. Muputi/Kimutwa/146
e. Muputi/Kimutwa/206

And that prior to her demise she had distributed the properties as follows.

- Muputi/Kimutwa/318
- Muputi/Kimutwa/109
- Muputi/Kimutwa/141 - David Mulungye Musyoka

- Muputi/Kimutwa/146 - Joseph Tom Kithunga
- Muputi/Kimutwa/206 - Simon Muteti Kithunga

3. A dispute arose and the issue was settled by the Land Disputes Tribunal in Case No. **8** of **2007.** Other assets are omitted. What is disclosed is what belongs to the objectors.
4. With this kind of information pursuant to the provisions of **Section 70** of the **Law** of **Succession Act,** this court prior to issuance of the grant, in the interest of justice opted to hear the parties. Evidence adduced established that the deceased had **5 parcels** of land:

i. Muputi/Kimutwa/318
ii. Muputi/Kimutwa/109
iii. Muputi/Kimutwa/141
iv. Muputi/Kimutwa/146
v. Muputi/Kimutwa/206

5. A dispute arose in respect of the parcels. The issue had to be determined by the Land Dispute Tribunal. Following evidence adduced by the deceased she offered to transfer 3 parcels to the petitioner;-

i. Muputi/Kimutwa/318
ii. Muputi/Kimutwa/109
iii. Muputi/Kimutwa/141

6. While the other two (2) parcels were to be given to her other grandchildren. It is admitted the objectors have possession of titles for each portion as passed over by their grandmother (deceased) although transfer has not been effected (***see Decree in Civil Misc. No. 41/2008).***
7. What was not established is whether or not the three parcels of land have already been transferred to the petitioner per the deceased's wish.
8. This court heard evidence of parties herein on the **11th October, 2013**. The ruling was reserved for **13/12/2013.** Unfortunately for reasons this court cannot discern, a Grant of Administration intestate was signed dated **14th October 2013.** The grant was made to **David Mulungye Musyoki.** This was unprocedural.
9. **Section 76** of the **Law of succession Act** stipulate that;-

"***A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or its own motion-***

a. ***the proceedings to obtain the grant were defective in substance;***
b. ***That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***
c. ***that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant not withstanding that the allegation was made in ignorance or inadvertently;***
d. ***that the person to whom the grant was made has failed, after due notice and without reasonable cause either -***

i. ***to apply for confirmation of the grant within one(1)year of the from the date thereof, or such longer period as the court has ordered or allowed; or***
ii. ***to proceed diligently with the administration of the estate; or***
iii. ***to produce to the court , within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or as produced any such inventory or account which is false in any material particular; or***

e. ***That the grant has become useless and inoperative through subsequent circumstances.***

10. From the foregoing it is apparent that some material facts were concealed from the court at the time of making the application. Some statements made are far from being true. This calls for

revocation of the grant. Which I hereby do.

11. In the interest of justice, since the Petitioner is the surviving son of the deceased and it is not known if the deceased could have left more assets than what has been disclosed, I will order that the Grant of Letters Administration herein do issue to three persons namely.

i. David Mulungye Musyoki
ii. Joseph Tom Kithunga
iii. Simon Muteti Kithunga

12. It is so ordered

DATED, SIGNED and **DELIVERED** at **MACHAKOS** this **3RD** day of **APRIL, 2014**

L.N. MUTENDE

JUDGE